In the

UNITED STATES SUPREME COURT

No. 165

DORA B. HENDRON, ET AL.,

VS.

YOUNT-LEE OIL COMPANY, ET AL.

REPLY TO PETITION FOR WRIT OF CERTIORARI

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May it please the Court:

We submit herewith a brief outline of certain reasons why, in our opinion, Petitioners' application for writ of certiorari should be denied in this cause.

I.

Petitioners' contention that a Federal District Court can engraft a trust on State Court Judgments is valid only where acts of extrinsic fraud are alleged, and not where as in the case at bar, the alleged fraud, if any there be, touches only on matters intrinsic in the State Court Proceedings.

The above proposition, which goes to the very heart of Petitioners' application, was pointed out early in this case by Judge Atwell who heard and decided the cause in the District Court below and who filed a supporting opinion. We quote a brief excerpt from that opinion:

> "There is a jurisdiction in the United States Court, by way of its equity power, to relieve against a judgment which has been obtained by fraud, but that fraud must be extrinsic. Such cases as Angle vs. Shinholt, 90 F. (2d) 296, state the Texas rule as to the necessity for fraud to relate to extrinsic matters." Also, see Phillips vs. Jenkins, 91 F. (2d) 189.
>
> "Circuit Judge Bratton for the Tenth Circuit, in Moffett vs. Robbins, 81 F. (2d) 431, (Cert. den. 56 S. Ct. 940) writes interestingly along the same lines.
>
> "The power of a National Court to restrain the enforcement of a judgment which has been fraudulently obtained in a State Court, when the fraud is extrinsic to the matters tried, and not determined by the State Court, and which does not cause the Court to render a wrong judgment, is well known.
>
> "A party suing in an action of that sort, to enjoin the enforcement of a judgment fraudulently obtained in a State Court, must show a valid defense to the cause on which the judgment was rendered, and *show that he was prevented by extrinsic fraud, accident, mistake, concealment, or other chicanery, from presenting such defense, and that he has not been negligent in availing himself of his defense.* All intrinsic fraud all matters that were

included in the determination are barred from futher consideration, and afford no right to enter a National Court.

"Since this case does not come within the diagram of cases that are permitted to come to us, after having been determined in another jurisdiction finally, it is dismissed.

(Signed) Wm. H. Atwell,
United States District Judge.
Tyler, Texas,
June 15th, 1939."

The Circuit Court of Appeals then, in writing its opinion, could naturally assume that Petitioners knew of the distinction between extrinsic and intrinsic fraud and that the former, which had not been alleged, was the only character of fraud of which a Federal equity Court could take hold.

Petitioners concededly have made a collateral attack on the State Court judgments. In the case of *Fagin vs. Quinn*, 24 F. (2) 42 (Certiorari denied 277 U. S. 606), it was held that the rule against collateral attack by allegations of intrinsic fraud applies, even though the relief sought is to engraft a trust on earlier State Court judgments. That case, like this, arose from the Eastern District of Texas, was an attack on an earlier State Court judgment, and, also like the case at bar, prayed that Defendant therein be charged as constructive trustees. The Court there sustained Defendant's plea of res adjudicata, saying "Where the issues are identical the

fact that the relief prayed for is slightly different, is immaterial. * * * That (State Court) decision became final and, whether right or wrong, cannot again be brought in question by an original Bill in a Federal Court."

II.

The Circuit Court Judgment was correct, for Petitioners' bill below was actually an attempt to appeal from the State Court Judgment, whereas appeal from a State Supreme Court lies direct to the United States Supreme Court.

Petitioners' sole remedy was by going direct to the Supreme Court of the United States from the Supreme Court of Texas, and not by an original Bill in equity.

28 *U. S. C. A., Sections* 41 and 344;

Tidal Oil Co., vs. Flanagan, 263 U. S. 444;

Frazier Company vs. Long Beach, etc., 77 F. (2d) 764;

Rooker vs. Fidelity Trust Co., 263 U. S. 413;

Fryberger vs. Parker, 28 F. (2d) 493.

III.

The Circuit Court was correct in giving as one basis for its judgment of affirmance the fact that no substantial Federal question was alleged by Petitioners.

A careful reading of the original Bill will show that, aside from complaints as to the entry of judgments and

"arbitrary" holdings, no allegation of *fact* can be found therein which constitutes fraud. Actually, the Bill is one which alleges conclusions of law alone and which seeks to make a case of fraud simply by using the word "*fraud*" and similar phrases over and over. Such allegations, it has been many times held, do not state a substantial Federal question as against a general demurrer, or a motion to dismiss.

Silberschein vs. United States, 266 U. S. 221;

Collins vs. Johnston, 237 U. S. 502;

Marquez vs. Frisbie, 101 U. S. 473;

Ambler vs. Chotau, 107 U. S. 586;

Van Weel vs. Winston, 115 U. S. 228.

CONCLUSION

WHEREFORE, Respondents respectfully pray that this Court deny Petitioners' application for writ of certiorari.

Respectfully submitted,

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